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HUMAN RIGHTS COMMITTEE

Fortieth session

SUMMARY RECORD OF THE 1015th MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 25 October 1990, at 3 p.m.

Chairman: Mr. LALLAH

later: Mr. SERRANO CALDERA
Mr. LALLAH

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The meeting was called to order at 3.10 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (agenda item 4) (continued)

Third periodic report of Finland (CCPR/C/58/Add.5) (continued)

1. Mr. LEHTIMAJA (Finland) said that initially he would confine himself to replying to questions raised in connection with paragraph 27 of the report, and which were concerned with the way in which the State of Defence Bill currently before Parliament would enhance the rights of individuals as compared with the present legislation on the state of war. That legislation had been prepared in 1930; its provisions had therefore become out of date and, in particular, failed to take account of human rights considerations. The new Bill reflected the desire of the Finnish authorities to provide for both defence needs and the protection of the fundamental rights of individuals. Once adopted, the new Act would be subject to the limitation set forth in article 4 (2) of the Covenant. It expressly provided for several safeguards - namely, the principles of proportionality, of minimum intervention, and of non-discrimination. In addition, the Bill stipulated that international human rights standards would prevail in all cases.

2. With regard to the internment procedure provided for by the State of Defence Bill, the principle of minimum intervention required that a person could be interned only as a last resort; moreover, the right of appeal against an administrative decision to intern would be guaranteed and the usual rules for compensation for the damage caused would be applicable.

3. Finally, since the Bill had not yet been adopted, the Committee could rest assured that all its comments on the subject would be duly taken into account by the Finnish authorities.

4. The CHAIRMAN invited the Finnish delegation to reply to the questions contained in section IV of the list of issues, which read as follows:

"IV. Non-discrimination and equality of the sexes (articles 2 (1), 3 and 26)

(a) Are there any plans to extend to other aliens the right to participate in municipal elections currently recognized in the case of citizens of other Nordic countries? (see paragraph 126 of the report)

(b) Please provide further information on the proposal by the Task Force for Penal Code Reform for a new penal provision on discrimination (see paragraph 132 of the report)."

5. Mr. LAHTI (Finland), replying to the question put in paragraph (b), explained that the point in question was being discussed as part of the total revision of the Penal Code in which the competent authorities were currently engaged. The first part of the revised text had just been approved by Parliament and ratified by the President. The new provision on discrimination was included in the second part, which would be submitted to Parliament probably next year; it was one of the many provisions which were due to make up the new Finnish Penal Code. It would appear in the chapter concerned with

crimes against humanity, a chapter which already existed in the present Penal Code and which offered a number of definitions of such crimes. However, the new provision would have a broader application and would deal, for example, with discrimination based on race, national or ethnic origin, skin colour, language, sex, age, kinship or state of health in the exercise of a profession, the performance of a public function or the organization of a public event; such discrimination would be punishable by a fine or by a maximum term of imprisonment of six months. Another draft article provided for a fine or for a maximum term of imprisonment of one year for persons found guilty of promoting discrimination at work.

6. All those draft provisions had in common the desire to enhance equality and to prevent discrimination based on the foregoing motives.

7. Ms. CHANET expressed her satisfaction that the Finnish report was in complete conformity with the Committee's guidelines and that it had been submitted within the prescribed time. She noted that the various Finnish authorities were applying the provisions of the Covenant and that the Government was generally taking account of the comments made by the Committee in its consideration of communications under the Optional Protocol.

8. She wished, however, to have some clarification of the law permitting Jehovah's Witnesses not to perform national service, either in an armed forces or in an alternative capacity, and would like to know the reasons for the difference in treatment between Jehovah's Witnesses and others who, for reasons of religion or conscience, were unable to serve in the armed forces. She wondered whether that was not a violation of the principle of non-discrimination and, therefore, incompatible with article 26 of the Covenant.

9. With regard to paragraph 132 of the report, she wished to have confirmation that a person's state of health really would be included among the factors that could not be used as a basis for discrimination and that the new provision on discrimination would also be applied to institutions such as banks, which, in Finland, apparently required that applicants for employment must produce an attestation proving that they were not AIDS carriers.

10. Mr. LAHTI (Finland), replying first of all to the question concerning paragraph 132 of the report, said that a person's state of health would obviously be specified as one of the factors that could not be used to authorize any form of discrimination. AIDS and HIV infection could, in fact, be considered as forming part of a person's state of health and, as such, be mentioned in the new provision. Nevertheless, it should be borne in mind that the text was still only a draft and that the question as to how to evaluate correctly the situation referred to by Ms. Chanet was still being looked into. There already were provisions for the protection of the individuals concerned, but they were not sufficient.

11. Mr. LEHTIMAJA (Finland) informed the Committee that the Ombudsman of the Chamber of Representatives had recently been seized of a complaint from a handicapped person working in the hotel trade, who had requested that disablement should be expressly mentioned in the new provision on discrimination.

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12. The situation with regard to AIDS in Finland was not as acute as it was in other countries, but the authorities were considering the possible forms of discrimination in that respect and the Ombudsman had received a small number of complaints on the subject. The new legislation must therefore take due account of the decision to be taken in those cases.

13. As far as the exemption of Jehovah's Witnesses from military service was concerned, he stressed the very special nature of the circumstances. In the past Jehovah's Witnesses had refused not only to perform military service, but also to perform civilian service in lieu thereof and had served terms of imprisonment as a result. The Finnish authorities had considered that such a situation was not desirable, and a law had therefore been specially promulgated for the benefit of members of that religious community. The idea of the authorities was to grant a special status to the community, which was unlike any other and showed great coherence in its beliefs. Although the law in question had not been the subject of any major criticism in Finland, he admitted that it entailed giving favourable treatment to a specific group of conscientious objectors and it was therefore understandable that the Committee might wonder whether it did not constitute a form of discrimination.

14. The CHAIRMAN asked, without wishing to be ironical, whether the number of Jehovah's Witnesses in Finland had increased since the adoption of the new legislation.

15. Mr. LEHTIMAJA (Finland) said that the Finnish Government had of course wondered whether the new legislation would not become simply a means of evading military or civilian service. However, membership in the religious community of the Jehovah's Witnesses was of such a special nature that there was no real danger that the law would be abused for that purpose. Furthermore, no resulting increase in the number of Jehovah's Witnesses had been noted.

16. Mrs. HIGGINS said that she would not comment on the treatment given to Jehovah's Witnesses, since she personally was quite satisfied with what appeared to be a positive discrimination in favour of them which was relatively justified in the light of their religious beliefs. Her remarks would deal, instead, with the difference in length between the various kinds of national service. Although in its final views on communication No. 295/1988 (CCPR/C/WG/38/DR/295/1988) the Committee had concluded that the difference between the respective lengths of service did not constitute a violation of the Covenant, it had nevertheless expressed some concern in that regard. She noted that the Status of Conscientious Objectors Act (No. 647/1985) was provisional and would expire, in principle, at the end of 1991. In her opinion it would be extremely desirable for the authorities to review that Act, bearing particularly in mind two dangers to be avoided: that the new Act might be prejudicial to genuine conscientious objectors and that it might appear to be a provision based on considerations of administrative convenience.

17. Mr. MAVROMMATIS drew attention to two important points in the decision taken by the Committee concerning communication No. 295/1988 (CCPR/C/WG/38/DR/295/1988): first, the Committee had not found a violation of article 26 of the Covenant and, second, it had nevertheless expressed reservations regarding the exemption of Jehovah's Witnesses from any form of service.

18. However, he might not have taken the position which he had adopted during the discussion of that case if he had been aware of the arguments put forward today by the Finnish delegation. Without wishing to appear to be reopening the discussion in the Committee, he recalled that the Committee had concluded that the extension of the period of alternative service from 12 to 16 months was not repressive in nature, which was probably true. He nevertheless wondered about the validity of that finding in a case where the length of alternative service had been doubled. In his opinion, to double the length of alternative service in relation to the length of military service was a highly repressive measure, and he particularly wished to draw the attention of the Finnish authorities to that point, recommending that they should take due account of it when the Act was reviewed.

19. Mr. ANDO proposed that the discussion on the subject should be closed. The statements made by Mrs. Higgins and Mr. Mavrommatis accurately reflected the debate that had taken place in the Committee when communication No. 295/1988 had been considered; on the whole, he took the view that it was not advisable to discuss matters falling under the Optional Protocol when the report of a State party was being considered.

20. The CHAIRMAN pointed out that the Committee had decided to request the Governments of the States parties concerned to take measures to follow up the Committee's final views on the communications which it had had before it. Furthermore, in so far as the Status of Conscientious Objectors Act was probably going to be reviewed, the Government must be in a position to benefit from the views expressed by the Committee if it so desired. If, as was the case with the Finnish delegation, the representatives of the State party whose report was being considered showed a willingness to co-operate, the Committee had a duty to respond and to assist the Government by informing it of its findings. Quite obviously, however, the attitude displayed by the representatives of the State party and their willingness to co-operate were of decisive importance in that process.

21. Mr. GRONBERG (Finland) said that military service usually lasted 8 months, but it could last as long as 11 months for persons who had special training. Conscientious objectors were also trained and performed work in a form of service that was less exacting than military service itself. That was why the Finnish Government would have to draw up a scale of different kinds of service according to categories, and it would certainly take account of the opinions expressed in the Committee when it reviewed Finnish legislation in that field.

22. The CHAIRMAN invited the Finnish delegation to reply to the question contained in section V of the list, which read as follows:

> "V. Right to life (article 6)
>
> Are there any plans by Finland to ratify the Second Optional Protocol to the Covenant, aiming at the abolition of the death penalty?"

23. Mr. GRONBERG (Finland) said that the death penalty had been completely abolished in 1972 and that in 1990 Finland had ratified Protocol No. 6 to the European Convention on Human Rights. The Finnish Government intended to ratify the Second Optional Protocol to the Covenant in 1990.

24. Mr. WENNERGREN noted with interest, as was indicated in paragraph 32 of the report, that draft legislation on artificial procreation techniques was being considered. Noting that "human embryo research would be subject to permission by the National Board of Health", he wondered whether the Board itself had sufficient experience and technical knowledge to be able to take decisions in that field directly and whether there were any plans to establish, within the Board, a special medical ethics committee to advise the Board in the matter.

25. Mr. ANDO associated himself with the question asked by Mr. Wennergren. The National Board of Health apparently had relatively extensive powers to authorize certain experiments, and he wondered whether it had adequate support in the form of specialists, particularly jurists.

26. Mr. MAVROMMATIS, referring to paragraph 30 of the report, asked whether there was in Finland a law or military code authorizing the imposition of the death penalty in wartime and whether the Finnish Government had entered reservations in respect of article 2 of the Second Optional Protocol.

27. Mr. GRONBERG (Finland) replied that the death penalty had been totally abolished and was therefore eliminated, even in wartime.

28. Mr. LAHTMI (Finland) said that reforms were being undertaken in his country in order to regulate the use of artificial procreation methods and to provide legal guarantees to protect children born as a result of the use of such methods, to protect the human embryo and to respect the genetic integrity of the human being. The Finnish Government was fully aware of the emergence of new rights which would have to be taken into account when the legislation was reformed. In general, however, it considered that research on the human embryo must first of all be regulated by law before it was taken up in criminal law.

29. It might well be the case that the composition of the National Board of Health was not fully adequate, and it was very possible that a committee specializing in medical ethics and health law would be established within the Board in the near future. When it drafted reforms in that field, the Finnish Government would take due account of the suggestions made by members of the Committee.

30. The CHAIRMAN invited the Finnish delegation to reply to the questions contained in section VI of the list, which read as follows:

> "VI. Liberty and security of the person and treatment of prisoners and other detainees (articles 7, 9 and 10)
>
> (a) What is the current status of the Bill amending the Law on Military Disciplinary Procedure and the relevant Ordinance? (See paragraph 49 of the report.)
>
> (b) With reference to paragraph 50 of the report, has the proposal relating to reforming the custody arrangements under the Aliens Act been followed up?

(c) Please provide relevant further details concerning plans to develop the penitentiary system and penal sanctions discussed in paragraph 69 of the report.

(d) Is there any maximum limit to the period of preventive detention under the Dangerous Recidivists Act? (see paragraph 72 of the report)".

31. Mr. GRONBERG (Finland), replying to question (a), said that the legislation under which a conscript could have a decision on military confinement examined by a court had come into force on 1 May 1990. As far as question (b) was concerned, a new bill had been submitted in April 1990. The Committee could be given detailed information on it if it so wished.

32. Mr. LAHTMI (Finland), referring to question (c), said that the bill providing for a partial reform of the Young Offenders Act had now been ratified, with a few minor amendments concerning certain human rights aspects. The Government was also planning to introduce several other reforms in the criminal justice system, with a view to strengthening it from the humanitarian standpoint and to affirming the principles of respect for the dignity and integrity of the individual. The report also indicated that the prison population had fallen over the past 10 years, Finland being perhaps the only country in Europe where such a trend was occurring. In addition, the Government was planning to alter the length and nature of prison sentences and to provide for penalties other than imprisonment. Plans to build new, smaller, prisons and "open" detention centres had also been finalized.

33. With reference to question (d), he explained that the principle of incarceration for an indeterminate period had been the subject of many disputes and much criticism, which had led to the drafting of a reformed version of the Penal Code. From now on, a maximum limit would have to be imposed on the length of incarceration and, in practice, detainees could be released on probation after serving one half or two thirds of their sentence.

34. Mr. POCAR raised a question concerning compliance with the provisions of article 7 of the Covenant. He recalled a case which had apparently occurred in Finland in the summer of 1990 in which two Soviet citizens who had hijacked an aircraft and applied for asylum in Finland had been sent back to the Soviet Union pursuant to a decision by the Supreme Court of Finland. He wished to know whether that decision of the Supreme Court was based on factual considerations, since the Court had considered that the plea that the persons concerned were in danger of being tortured in the USSR was unfounded, or whether the decision had been taken on legal grounds, since the Court had considered that the question as to whether the two citizens concerned might be subjected to ill-treatment abroad was not covered by article 7 of the Covenant. In the first case, the decision would have been in conformity with the principles of law, but in the second case, it would have been clearly contrary to the obligations arising from article 7 of the Covenant.

35. Ms. CHANET asked, in the first place, how long a person could be held incommunicado, in what conditions incommunication was imposed, whether it was a disciplinary measure or a measure required for the investigation of the case, and whether it was possible to appeal against a decision to hold a person incommunicado. In the second place, she asked what kinds of penalty other than imprisonment were provided for in legislation and whether such

penalties could be applied for failure to perform military service. In the third place, she was surprised that a prison board could decide to hold an offender in preventive detention, as was indicated in paragraph 72 of the report, noting that the imposition of a sentence of indeterminate duration was contrary to the provisions of article 10 of the Covenant. In addition, she pointed out that detainees should also be able to appeal to a court, in conformity with article 9 (4) of the Covenant. She wished to know whether the Finnish delegation shared her concern regarding those incompatibilities between Finnish legislation and the Covenant.

36. Mr. MYULLERSON, referring to paragraph 72 of the report, requested some clarification of the possible distinction made between "incarceration for an indeterminate period" and "preventive detention". He asked whether the prison board reviewed, every six months, the cases of persons incarcerated for an indeterminate period, and for what offences a person could be sentenced to incarceration for an indeterminate period or placed in preventive detention.

37. Mrs. HIGGINS asked for some further information on the implementation of the Aliens Act mentioned in paragraph 50 of the report. She wished to know whether the Act applied to aliens who were not yet resident but who wanted to enter the country, as well as to resident aliens, and, if so, on what grounds a person could be held in custody.

38. She noted with satisfaction that the Mental Health Act was being reviewed. In that connection she wondered whether the stipulated period of 14 days in which to appeal against a decision in favour of obligatory confinement was sufficient. Finally, the Finnish delegation had mentioned that it was unusual to record a fall in the prison population. Was the fall that had taken place in Finland explained by a more frequent recourse to penalties other than imprisonment or by a fall in the crime rate?

39. Mr. WENNERGREN asked what exactly was meant by the "violence" mentioned in paragraph 63 of the report, whether treatment consisted, for example, of having medicines administered or of being sent for psychotherapy, and why there was no provision for control by the administrative courts. He also asked what was meant by a person being a health hazard, as mentioned in paragraph 62. In connection with paragraph 77, he was surprised that legislation did not provide for an immediate judicial review of decisions to isolate sick persons. Finally, he wondered why HIV infection and AIDS were not classified as contagious diseases in Finland.

40. Mr. MAVROMMATIS, commenting on paragraph 72 concerning the Dangerous Recidivists Act, stated that he had received from non-governmental organizations some information on the solitary confinement to which recidivists were reported to be subjected and asked whether there really was, as those organizations affirmed, a law providing for the solitary confinement of dangerous recidivists and whether it was possible for prison boards to order, on the ground of past offences or of acts of violence, a dangerous recidivist to be isolated in a special establishment. He had been informed of the case of a person who was reported to have remained in a cell for more than nine years. He had difficulty in believing that such information was correct; but if it was, he would like to know how prison boards were constituted, what jurisdiction they had, and whether it was possible to have their decisions reviewed by a higher judicial or administrative authority.

41. Mr. GRONBERG (Finland), replying to Mr. Pocar's question on the hijackers arrested last summer, began by stating that the hijackers in question, of whom there were three in fact, had applied to Finland for asylum. However, the Minister of the Interior, who was the competent authority to decide on the granting of asylum, had rejected their application. It had therefore been necessary to decide, subsequently, whether they would be extradited or not. That particular decision had had to be taken by the Minister of Justice. It had, however, been open to both the persons concerned and the Minister of Justice to request an opinion from the Supreme Court on the subject. The hijackers had applied for an opinion to the Court, which had found that there was no valid ground for rejecting the application for extradition. In the opinion which it had handed down, the Supreme Court had referred to the Covenant.

42. In reply to the question asked by Mrs. Higgins concerning the new Aliens Act, he explained that the Act was very comprehensive and applied to all matters of concern to aliens, from applications for visas to the granting of asylum and the arrangements for appealing against decisions taken in respect of them. The Act was currently before Parliament and had been widely discussed, both in Parliament and among the public.

43. Mr. LAHTI (Finland) noted that many questions had been asked concerning the Dangerous Recidivists Act. That clearly showed that the Act was causing problems and was an additional reason for abolishing it. The Dangerous Recidivists Act was also known as the Preventive Detention Act, but they were really one and the same Act. The grounds justifying recourse to it were set forth in paragraph 72 of the report (CCPR/C/58/Add.5). Under the legislation in question, a tribunal was initially responsible for deciding that a person could be placed in solitary confinement; an administrative organ known as a prison board then took the final decision. It was not possible to appeal against a decision by the prison board, since the decision in principle had been taken by the tribunal; on the other hand, it was possible to appeal against the decision of the tribunal.

44. When recidivists had served their prison sentences, the prison board had to consider the possibility of releasing them on probation; it did so periodically. On the whole, the practice was to release them on probation.

45. Those special penalties, which had attracted the attention of the experts serving on the Committee, had also been criticized in Finland, and in the reformed version of the Penal Code currently under consideration it was proposed to abolish them.

46. In its search for alternatives to sentences of imprisonment, the Government was planning to introduce, on an experimental basis, sentences that would be served in the form of community services. Voluntary mediation was also used, and often judicial proceedings were abandoned so that the case could be treated by the social welfare authorities - as, for example, happened with juvenile delinquents.

47. However, the fall in the number of prison sentences being served was due not only to an increasingly frequent recourse to penalties other than imprisonment, but also to the fact that the prison sentences imposed were shorter. Unfortunately, although the prison population had diminished, that was not because of a fall in the crime rate, since the trend in Finland was,

on the whole, for it to rise. However, Finland's fundamental approach to the matter was that criminal law and the penal system had only a modest role to play in preventing crime and combating delinquency and that it was preferable to place great reliance on the principles of justice and humanity and to try to find penalties and procedures in conformity with the principles of human rights.

48. Mr. LEHTIMAJA (Finland), replying to the question asked by Mrs. Higgins concerning the new Mental Health Act and the proposal to reduce from 30 to 14 days the period in which an appeal could be made against a decision to confine a person forcibly in a psychiatric hospital, said that in his opinion the purpose of the change was to speed up the procedure; it had probably been considered that if the sick person remained in confinement for too long, he might undergo treatment having possibly irreversible effects. All the same, the sick person must in practice be able to avail himself of the legal remedy.

49. In reply to Mr. Wennergren's question concerning the conditions required for compulsory treatment under the Welfare for Intoxicant Abusers Act and the concepts of health hazard and violence referred to in paragraphs 61, 62 and 63 of the report, he explained that "health hazard" meant the risk of contracting a disease or of receiving an injury incurred by a person who refused to stop abusing toxic substances and also the risk which the sick person constituted for the health, life or mental and emotional development of his family, particularly children, or any other person. It was his understanding that the responsible physician's decision to oblige a person to undergo treatment against his will if he or she was a health hazard for others, must, as in cases of violence, be submitted to the Provincial Administrative Court for approval, but he would request confirmation of that.

50. Mr. ANDO pointed out that the questions asked by Mr. Mavrommatis and Mr. Myullerson had not been answered.

51. Mr. LAHTI (Finland) explained, in that connection, that there was only one special penalty for dangerous recidivists - namely, incarceration for an indeterminate period, which was also known as preventive detention. There were plans to abolish that penalty. With regard to the example mentioned of a person who had spent nine years in the cells, it was clear that if such a situation could be arrived at under a law, that law should be abolished.

52. Mr. Serrano Caldera took the Chair.

53. The CHAIRMAN invited the Finnish delegation to reply to the questions contained in section VII of the list, which read as follows:

"VII. Right to a fair trial (article 14)

(a) Please clarify whether the amendments to the Cost-Free Proceedings Act, discussed in paragraph 84 of the report, have actually resulted in the withdrawal of Finland's reservation to article 14 (3) (d) of the Covenant.

(b) With reference to paragraph 85 of the report, please clarify what consideration is being currently given to the withdrawal of the Finnish reservation to article 14 (7) of the Covenant.

(c) Please provide further information concerning the application in practice of the Publicity of Court Proceedings Act (No. 945 of 21 December 1984)."

54. Mr. GRONBERG (Finland), referring to question (a), stated that, as a result of the amendments made to the legislation on legal aid, the reservation entered by Finland in respect of article 14 (3) (d) had become unnecessary and had been withdrawn on 1 August 1990.

55. Mr. LEHTIMAJA (Finland) noted that article 14 of the Covenant was concerned with the principle of non bis in idem. In fact, the reservation in respect of article 14 (7) had been discussed in Finland on many occasions and the need for it had been questioned, since Finland recognized the principle concerned. In Finland it was possible, within a specified period, to reconsider even a final decision handed down by a court if it was found that the decision had not been correct, unlike what happened in the Anglo-Saxon system, in which there really could be no appeal against the verdict of a jury. Article 14 (7) could be interpreted as providing grounds for invoking the reasons which it set forth for reconsidering a decision or verdict handed down by a court in accordance with Finnish legislation; it was only after the specified period had elapsed that the decision or verdict really became final. For the moment Finland did not intend to withdraw its reservation, since the paragraph in question did not appear to be in conformity with the spirit of Nordic law and the present legislation was not contrary to the principle of non bis in idem on which article 14 (7) of the Covenant was based.

56. The CHAIRMAN invited the Finnish delegation to reply to the questions contained in section VIII of the list, which read as follows:

"VIII. Freedom of movement and expulsion of aliens (articles 12 and 13)

(a) Please provide information concerning procedures for appeal against adverse decisions taken under the Passport Act and Passport Decree which entered into force on 10 October 1987.

(b) In case an alien's work or residence permit is withdrawn, which appears to have the effect of an expulsion decree, what remedies are available?"

57. Mr. GRONBERG (Finland), referring to the first of the two questions, concerning procedures for appeal against decisions to expel an alien taken under the Passport Act, said that the Act allowed an appeal before the Provincial Administrative Court and before the Supreme Administrative Court; the procedure involved was therefore quite normal.

58. In reply to the second question, he pointed out that the Aliens Act was being reviewed by Parliament, where it was in the process of being amended. However, under the legislation still in force, an appeal against a decision to expel a person or to withdraw a residence or work permit had to be addressed to the Supreme Administrative Court.

59. Mr. Lallah resumed the Chair.

60. Mr. MAVROMMATIS said that the grounds for refusing to issue a passport set forth in the new Passport Act seemed anachronistic. They were no longer invoked by practically any country. Sub-paragraphs 1, 3, 5 and 6 (2) of paragraph 74 of the report seemed particularly questionable. He feared that the grounds for refusing to issue a passport stipulated by the new Act could give rise to abuses by the authorities.

61. Mrs. HIGGINS endorsed the concern expressed by Mr. Mavrommatis regarding the grounds for refusing to issue a passport. Furthermore, she found it hard to see what really lay behind sub-paragraph 6 of paragraph 74 of the report, according to which a passport could be refused to a person liable for military service "unless he shows that his liability for military service does not constitute a bar to the issue of a passport". The last ground given in paragraph 74 was also not very explicit, since the nature of the "travel ban referred to in Chapter 7, Section 10, of the Execution Act" was not specified. Finally, she believed that in paragraph 75 the words "instead of issuing the passport" should read "instead of refusing to issue the passport". Whatever the case, she was convinced that almost all the grounds for refusing to issue a passport in Finland were incompatible with article 12 of the Covenant.

62. Mr. NDIAYE, also commenting on the grounds for refusing to issue a passport provided for in Finnish legislation, said that they were both vague enough to allow the administration to interpret them very broadly and sufficiently elastic to cover all sorts of situations. For example, to refuse to issue a passport to someone "who has been found incapable of caring for himself" would really be tantamount, in most countries at least, to refusing to issue passports to immigrant workers. Although the new Act showed some progress in comparison with the provisions relating to the issue of a passport set forth in the second periodic report (CCPR/C/32/Add.7), it would be advisable to review it again so that only very precise and serious grounds for refusing to issue a passport were retained. In any case there were other ways of dealing with the situations covered by the Act.

63. Mr. WAKO said that each of the grounds for refusing to issue a passport set forth in the report could be justified by the Finnish delegation under article 12 (3) of the Covenant, which stipulated that the right to freedom of movement should not be subject to any restrictions except "those which are provided by law, are necessary to protect national security, public order (ordre public), public health or morals ...".

64. Mr. GRONBERG (Finland) pointed out that, as was stated at the beginning of paragraph 74, a citizen's right to travel abroad was a basic right. It must be clearly understood that the Act set forth the reasons for which a passport could be refused, but that did not mean that it was refused in practice. In actual fact, applications were nearly always satisfied. He understood the concern expressed by members of the Committee regarding some of the grounds set forth, but the translation of the Finnish law into English was often inaccurate. For example, in no circumstances were invalids included in the category of persons "incapable of caring for" themselves. As he had indicated when introducing the report, the Finnish State always met the cost of repatriating its citizens who were abroad and were unable to pay their return fare. When that happened too often, it was clearly necessary to find a way of preventing the individual concerned from doing the same thing again.

65. As far as the justification of the grounds provided for in the Act was concerned, he needed to study the travaux préparatoires in order to be able to reply.

66. Mr. LEHTIMAJA (Finland) said that he welcomed the criticism expressed by the Committee of the grounds for refusing to issue a passport provided for in Finnish law. The Ombudsman with whom he had worked had himself expressed concern regarding them when the text had been adopted and, in one of his decisions, he had invoked article 12 of the Covenant. He had urged that the grounds for refusal be interpreted in a very restrictive sense. The Finnish delegation would not fail to notify the Government of the Committee's critical remarks.

67. One of the reasons why the legislator had not paid very thorough attention to the grounds for refusal - which were, moreover, set forth in provisions that had been very badly translated into English - was apparently that prior to the adoption of the Act the issue of passports had been regulated by decree; it had been considered that the promulgation of an act had been a progressive step and had brought Finnish legislation into line with the provisions of article 12 (3) of the Covenant, which stipulated that restrictions must be "provided by law".

68. The CHAIRMAN invited the Finnish delegation to comment on section IX of the list of issues, which read as follows:

"IX. Right to privacy (article 17)

Has any further action been taken on the proposal of the Task Force on the Reform of the Penal Code relating to the adoption of new penal provisions against unlawful interference with privacy?"

69. Mr. LAHTMI (Finland) said that privacy was one of the issues that would be dealt with in the second phase of the reform of the Penal Code, which was scheduled to be concluded in 1991. The Government would thus submit to Parliament a draft text on offences concerning information and communications. The offence of "violating the privacy of communications" would have a much more extensive scope than at present and would cover, for example, a case where an individual had, without justification, secretly listened to or recorded a conversation which he was not supposed to know about or which no other person was supposed to know about. Furthermore, the provisions would no longer be limited to the home but would also cover other situations.

70. Mrs. HIGGINS asked what was meant, in paragraph 89 (b), by the words "data which is ... unnecessary". She would also like to have some details on the implementation of the new legislation on national health registers in the context of personal data files mentioned in paragraph 90 of the report.

71. It was her understanding that in Finland telephone tapping was forbidden in any circumstances. Did the police never have the right to apply for permission to tap telephones in order, for instance, to investigate very serious crimes? Finally, did the fact that the police were forbidden to tap telephones in any circumstances imply that the security services, when duly authorized, could, on the other hand, do so?

72. Mr. ANDO, noting that the Personal Data File Act was very broad in scope, asked whether its implementation might not, in certain cases, create serious difficulties; he was thinking, for example, of enterprises such as banks which might need data of that kind.

73. Mr. WENNERGREN asked about the procedure followed in Finland if someone was found guilty of having violated the prohibition on telephone tapping. Was there any case law on the subject, and was the Finnish delegation aware of any sentences being imposed?

74. The CHAIRMAN, speaking in his personal capacity and returning to the question put by Mr. Ando, asked whether Finnish legislation on the banking sector contained provisions imposing an obligation to obtain judicial authorization in order to be able to make public the contents of a bank account, for example at a trial.

75. Mr. LEHTIMAJA (Finland) explained first of all that in paragraph 89 (b) the word "unnecessary" used to describe data was wrong; what was concerned in Finnish law was "incomplete" data.

76. The question of telephone tapping had given rise to a lengthy debate in Finland, which was, with Belgium, apparently the only country to maintain an unconditional de jure and de facto prohibition. Privacy was guaranteed by the Constitution in absolute terms, unless an exception to the principle was provided for by legislation, which was not yet the case. Although several bills had been put forward on the subject, so far no text had been adopted. A police officer found guilty of having violated the prohibition on telephone tapping would, of course, be prosecuted and sentenced. It could quite obviously be objected that telephone tapping was useful, and even necessary, in order to investigate very serious cases such as drug trafficking. If it had not yet been found necessary to authorize telephone tapping, that might be because Finland was not experiencing serious problems.

77. All the other questions asked by members of the Committee, particularly those relating to banking secrecy, would be replied to later.

78. The CHAIRMAN invited the Finnish delegation to reply to the questions contained in section X of the list of issues, which read as follows:

> "X. Freedom of religion and expression; prohibition of propaganda for war and incitement to national, racial and religious hatred (articles 18, 19 and 20)
>
> (a) Please comment on the experience to date in applying the new legislation (647/1985) relating to the status of consciencious objectors. What alternatives are envisaged for the legislation after the conclusion of the current five-year trial period? (See paragraph 97 of the report.)
>
> (b) What possibilities exist for appeal against refusal of approval for distribution of videocassettes by the public authority mentioned in paragraph 105 of the report?

79. Mr. GRONBERG (Finland) replied that it was too early to evaluate the results of the implementation of the new legislation on the status of consciencious objectors. At present, a circular was being distributed to various departments in the public administration in order to obtain their opinion on the bill. It was probable that the legislation introduced on a temporary basis would become permanent, but some time would have to pass before one could be sure of that.

80. The remedy available in a case where approval was refused for the distribution of videocassettes consisted of an appeal to the Film Board and, on second instance, to the Supreme Administrative Board. The statistics given in paragraph 106 of the report showed that censorship was very rare.

81. Mr. WENNERGREN pointed out that, when its second periodic report had been considered, the Finnish delegation had indicated that atheist organizations did not have the right to engage in anti-religious propaganda. He wondered what specific reasons there could be for only atheists to be affected and whether such a provision was compatible with articles 18 and 19 of the Covenant.

82. Mr. GRONBERG (Finland) said that he would reply to that question at the next meeting.

The meeting rose at 6 p.m.